

Application No. 10/828,972

IN THE DRAWING

In the drawing, copy attached, a closure in the form of a conventional cap 19a has been added. This is not new matter, because a conventional cap closure for auxiliary gas inlet port 19 is disclosed in paragraph 11, pages 3 and 4 of the specification.

REMARKS/ARGUMENTS

In accordance with the Examiner's request, a provisional election was made with traverse by Applicants' attorney on December 14, 2004, to prosecute the invention of Group 1, Claims 1-9. No amendment of inventorship is necessary.

Referring to the Examiner's objection to the specification as allegedly lacking a brief description of the drawing, the Examiner's attention is directed to paragraph 7 wherein it is stated that the drawing illustrates "an elevation view of the invention with portions broken away to better illustrate the internal construction thereof." It is respectfully submitted that this is a brief description of the drawing in conformance with the 37 CFR §1.74. Reconsideration is requested.

In response to the objection to the drawing, the drawing has been corrected by adding a closure in the form of a conventional cap 19a as described in the last sentence of paragraph 11 of the specification. It is submitted that no new matter has been added.

Referring now to the rejection of the claims on the merits, Claims 1-9 have been rejected under 35 USC 102(b) as being anticipated by S.W. Briggs III, U.S. Patent No. 6,041,776, "Medical Nebulization Device". This rejection is, respectfully, traversed.

Applicants' attorney agrees that Briggs III discloses a nebulizer head 12, 12A, as illustrated in Figs 1 and 2, which has an auxiliary gas inlet port 52, 52a for introduction of a supplemental gas. A first chamber, in the form of a shell 24, 24a, has a closed top, enclosing sides and an open bottom adapted to receive for coupling thereto a receptacle 14, 14a. The receptacle 14, 14a is adapted to contain a liquid medicant 42, 42a which is dispensed at a predetermined rate of concentration. A second or nebulizing chamber 26, 26a is carried within first chamber 24, 24a at a position spaced from the closed top, and extends downwardly therefrom.

The nebulizing chamber 26, 26a has an open bottom through which passes outwardly therefrom entrained and nebulized liquid medicant. A nebulizing nozzle 36, 36a is in fluid combination with the nebulizing chamber 26, 26a for creating a nebulized aerosol from liquid medicant coupled thereto. A connection nipple 38, 38a couples a flow of nebulizing gas into the first chamber 24, 24a to the nebulizing nozzle 36, 36a and through the second or nebulizing chamber 26, 26a which is carried within the first chamber 24, 24a. An aspirator tube 40, 40a

has a first end positioned in fluid communication adjacent to said nebulizing nozzle 36, 36a, and a second end positioned to be received into liquid medicant 42, 42a contained within the receptacle 14, 4a.

An auxiliary gas inlet port 52, 52a is provided for introducing a supplemental gas into the first chamber 24, 24a and the second or nebulizing chamber 26, 26a.

Contrary to the contention in paragraph 12 of the Official Action, in the Briggs III patent the auxiliary gas inlet port for introducing a supplemental gas into the first chamber does not extend into the first chamber at a position removed from the interior of the nebulizing chamber. As clearly illustrated in Figs 1 and 2, of the Briggs III the supplemental gas introduced through the inlet port 52, 52a is introduced directly into the interior of the second or nebulizing chamber 26, 26a. One element of Applicants' invention, as set forth in independent Claim 1 and Claims 2-9 depending directly or indirectly therefrom, is that the supplemental gas is introduced into the first chamber only. To this end the auxiliary gas inlet port extends into the first chamber at a position removed from the interior of the nebulizing chamber. The function this structure performs is described in detail in paragraph 11 of the specification

Claims 2-9, which depend directly or indirectly from Claim 1, are believed to be allowable in view of their dependency from Claim 1. In addition, referring to Claim 5, the Briggs III patent does not disclose that the nebulizing chamber 26, 26a has an open top attached to the interior of the first chamber 24, 24a at a position above the auxiliary gas inlet port. Claim 6, which depends from Claim 5, further defines the nebulizing nozzle as being supported from the top of the first chamber above the nebulizing chamber. Briggs III clearly discloses and teaches that the nebulizing nozzle is attached to the interior of the first chamber at a position below the auxiliary gas inlet port, and the nebulizing nozzle is not supported above the nebulizing chamber, but extends downwardly into the interior thereof.

The additional prior art made of record, U.S. Patent No. 6,328,030; U.S. Patent No. 5,823,179; U.S. Patent No. 5,119,807; U.S. Patent No. 4,792,097; and U.S. Patent No. 3,353,536 have each been carefully considered. However, none of these prior art references are believed to be any more pertinent to Applicants' invention than the Briggs III reference. Accordingly, it is not believed that further discussion of these references is necessary.

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Every effort has been made to place this application in the condition for allowance; reconsideration is requested. In the event the Examiner is of the opinion that the prosecution of this application may be expedited by direct contact with Applicants' attorney, the Examiner is requested to call the number listed below.

In the event this response is not timely filed, Applicants hereby petition for the appropriate extension of time and request that the fee for the extension, along with any other fees which may be due with respect to this paper, be charged to our Deposit Account No. 12-2355.

Respectfully submitted,

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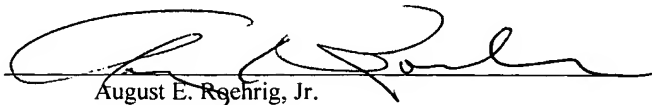
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I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450

on

4/28/05
Date


August E. Roehrig, Jr.